EXTRACTS FROM TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 560.

JOHN BUDZISZ AND AUGUST BUDZISZ, ALIAS ANASTAZIUS BUDZISZ, PLAINTIFFS IN ERROR,

vs.

ILLINOIS STEEL COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

RECORD FILED JANUARY 7, 1898.

(16,773.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 15, 1898.

therein stated upon information and belief, and as to these matters he believes them to be true.

JAMES H. PRICE.

Subscribed and sworn to before me this 21st day of February, A. D. 1896.

JOHN H. PAUL,
Notary Public, Milwaukee Co., Wis.

(Endorsed:) Filed February 26, 1896. Ed W. Kurtz, clerk.

* * * * * * *

United States Circuit Court, Eastern District of Wisconsin.

ILLINOIS STEEL COMPANY, Plaintiff,
vs.
JOHN BUDZISZ (alias) and AUGUST BUDZISZ (alias), Defendants.

And now come the defendants, John Budzisz and August Budzisz, alias Anastazius Budzisz, by Rublee A. Cole, their attorney, and, for their answer to the plaintiff's complaint herein, allege and show to the court:

First. That as a plea in abatement herein and as facts which do not appear upon the face of the complaint, which show that the plaintiff has not legal capacity to sue, and as a plea to the jurisdiction of the court, the defendants allege and show to the court—

That the defendants deny each and every allegation in plaintiff's complaint contained not hereinafter specifically admitted, stated, or denied; and the defendants specifically deny that the plaintiff is a corporation, and specifically deny that the plaintiff is duly organized and existing under and by virtue of the laws of the State of Illinois as a corporation, and further specifically deny that the plaintiff is authorized to hold, possess, and occupy real estate within the State of Wisconsin; and the defendants specifically deny that the plaintiff ever was seized in fee-simple absolute of the premises described in the complaint, and the defendants specifically deny that the plaintiff now is seized in fee-simple absolute of the premises described in the complaint; and the defendants specifically deny that the plaintiff is entitled to the immediate possession of the premises described in the complaint; and the defendants allege that the plaintiff never used the premises set forth in the complaint in the conduct of its business, and further allege that the said premises have never been necessary for the use of the plaintiff in the conduct of its business, and never will become necessary for the use of the plaintiff in the conduct of its business; and the defendants further allege that the plaintiff is an unlawful trust and monopoly and conspiracy in restraint of trade and commerce among the several States and in restraint of trade between the State of Illinois and the State of Wisconsin, and its pretended articles of consolidation and creation are illegal and in violation of the laws of the State of Illinois and of the United States and of the act entitled "An act to protect trade and commerce against unlawful restraints and mo-

nopolies," which was enacted on the second day of July, 1890, by the Congress of the United States and approved by the President July 2nd, 1890.

And the defendants further allege that on, to wit, the 1st day of January, A. D. 1889, at and within the county of Cook and State of Illinois, there was existing a certain corporation and body politic known and styled "The North Chicago Rolling Mill Company;" that said North Chicago Rolling Mill Company was incorporated by and under the provisions of an act of the General Assembly of the State of Illinois, which said act was approved on the 9th day of March, A. D. 1869; that the capital stock of the said company was fixed at one million dollars, divided into shares of one hundred dollars each, with power to said company to increase said capital stock to three millions of dollars; that the powers conferred upon said company were "to carry on the business of smelting, rolling, or otherwise working iron and other metals, and for that purpose may erect or purchase all such buildings, mills, furnaces, machinery, structures, and materials as shall be necessary or incident to said business, either in the city of Chicago or elsewhere, and, for the purpose of its said business, may acquire and hold all necessary real estate, and may sell, convey, or mortgage the same, as its board of directors shall think proper."

That said act conferred upon said corporation the further right and power to purchase the property of the Chicago Rolling Mill Company, on the north branch of the Chicago river, and pay for the same in stock of the company created by said act, and — the event of such purchase to maintain and operate the railroad tracks existing at the time said act was passed by said General Assembly, and which said tracks connected the works of said company with the tracks of the Chicago and Northwestern Railroad Company.

That thereafter the North Chicago Rolling Mill Company, pursuant to the power conferred upon it by said act of the General Assembly, purchased the property of the Chicago Rolling Mill Company and paid for the same in its stocks.

That on said 1st day of January, A. D. 1889, there was existing in said Cook county, Illinois, a corporation and body politic named the Union Steel Company; that said corporation was organized under an act of the General Assembly of the State of Illinois entitled "An act concerning corporations," approved April 18th, 1872, and in force July 1st, A. D. 1872, and all acts amendatory thereof; that the object for which said corporation was formed, as set forth in the application for license to open books for subscriptions to the stock of said company, was "to mine and purchase iron ore; to manufacture, sell, and generally deal in iron and steel, iron and steel ingots, blooms, railroad rails, billets, bars, plate, wire rod; plain, bright, and galvanized wire; railroad frogs, switches, and crossings, and all other kinds of manufactured iron and steel;" that the capital stock of said company was fixed at four million six hundred thousand dollars, and the location of the principal office at Chicago, Cook county, Illinois; that Marvin A. Farr, Charles L. Hilliard, and James W. Ferry were appointed commissioners to open books

for subscription to the capital stock of said company, and thereafter said commissioners reported to the secretary of state that all the stock of the said corporation had been described. Said commissioners further reported that it was agreed by and between the subscribers to the capital stock of said company that said shares of stock in the said Union Steel Company should be divided into two classes of stock, one to be denominated preference stock and the other common stock; that the preference of said preference shares should be to draw a seven per cent. annual dividend, payable out of dividends declared only after January 15th of each year after the year 1884, but that if such dividend was not declared and paid or if any part thereof was not paid in any year or years such annual dividend or any unpaid portion thereof should be cumulative and should be paid out of dividends declared in any subsequent year or years, and when the net earnings of said company would in the discretion of its board of directors justify the declaring and paying of such passed dividends; that after such dividends on such preference stock should have been declared and the money set aside to pay such dividends in full, in the manner aforesaid, a dividend not greater than seven per cent. annually might be paid upon said common shares out of the net earnings of said company in any year, but no dividend on said common stock should be payable unless the board of directors should declare a dividend on such common stock: that if no dividend should be declared on such common stock for any year the said dividend should not be cumulative, and no right to any dividend for that year should exist thereafter in favor of such stock or the holders thereof; that after such dividends should have been declared and paid in full upon said preferences and common shares of stock in the manner aforesaid, any and all additional dividends declared shall be declared and paid on all shares of stock *pro rata*, regardless of the preference of said preference shares of stock, and that in case of liquidation of the affairs of said company and of its assets, whether voluntary or involuntary, that the preference shares of stock should be paid in full before any payment might be made upon said shares of common stock.

Said commissioners also reported that at a meeting of the subscribers of said stock, held in the city of Chicago on the 16th day of February, A. D. 1884, that Henry H. Porter, C. W. Hilliard, James B. Goodman, M. A. Farr, Henry A. Gardner, Robert D. McFadden, George S. Lyon, William A. Gardner, Arthur E. Sturgess, James W. Ferry, and Oliver G. Fessenden were each elected a director of said corporation for the period of one year.

That the final certificate of incorporation of the Union Steel Company was issued by the secretary of state of the State of Illinois on the 19th day of February, A. D. 1884.

That the said North Chicago Rolling Mill Company and the said Union Steel Company, respectively, engaged in business under and by virtue of the respective powers conferred upon said corporations; that they maintained and operated plants at which they respectively manufactured and sold upon the market and by contract the

various kinds of manufactured iron which they were authorized by their respective charters to manufacture and sell.

That thereafter it was determined by the officers, directors, and shareholders of the said North Chicago Rolling Mill Company and the said Union Steel Company to consolidate said corporations, and pursuant to said determination articles of consolidation were prepared, which said articles of consolidation were submitted to the stockholders of said North Chicago Rolling Mill Company, and which said articles of consolidation were also submitted to the stockholders of the Union Steel Company at meetings of the stockholders of said corporations respectively; that the said articles of consolidation were submitted at said stockholders' meetings on the first and 2nd days of May, A. D. 1889, and that the stockholders of said respective corporations at said respective meetings respectively adopted and approved said articles of consolidation, and thereafter, by their respective presidents and secretaries, certified their respective actions upon said articles of consolidation to the secretary of state of the State of Illinois, together with the affidavits of their respective presidents, in which said affidavits the presidents of said North Chicago Rolling Mill Company and said Union Steel Company respectively made oath that the record and certificate of said consolidation so filed in the office of the secretary of state by said respective companies were true in substance and in fact; that said certificates of consolidation, together with the said affidavits of the said presidents of said corporations, were filed in the office of the secretary of state on the 3rd day of May, A. D. 1889.

That the said articles of consolidation, so adopted by said corporations respectively, provided for the consolidation with each other of said corporations, and for the consolidating, uniting, and merging their capital stock, their corporate and other franchises, rights, privileges, immunities, and property of every kind, nature, and description, and that the consolidated corporation so created should be known by the corporate name of the Illinois Steel Company; that said articles of consolidation provided for the transfer of all property, franchises, and supplies, privileges, rights, and immunities of every nature and kind whatsoever, should be transferred by said constituent corporations to the said Illinois Steel Company; that the said Illinois Steel Company should assume the debts of said constituent companies and perform the contracts thereof.

That by said articles of consolidation the powers of said Illinois Steel Company were declared to be to carry on the business of smelting, rolling, or otherwise working iron and other metals; to mine, manufacture, and sell and to generally deal in any and all metals and the products of the manufacture thereof; to mine and purchase iron and other ore; to manufacture, sell, an- generally deal in iron and other ores; *to manufacture, sell, and generally deal in iron and other ores;* to manufacture, sell, and generally deal in iron and steel, in iron and steel ingots, blooms, railroad rails, billets, bar-, plate, wire rod; plain, bright, and galvanized wire; railroad frogs, switches, and crossings, and all other kinds of manufactured iron,

steel, and other metals; to mine and sell coal, manufacture and sell coke, and generally to produce, sell, and deal in any and all supplies or products necessary, convenient, or incidental to any of the purposes, objects, or business of said consolidated corporation; to own, complete, extend, improve, maintain, and operate each of the several works and other properties heretofore owned by the respective parties hereto, and to use and enjoy all of the corporate and other franchises, rights, privileges, immunities, and property of every nature and description which form a part of or are appurtenant or relate to any of said works or to any of the property, real, personal, or mixed, heretofore owned, used, or enjoyed by either of the respective parties hereto or by the predecessors, grantors, or assigns of any of them; to acquire by purchase, lease, or otherwise such additional real estate, works, mines, or other property located either in the State of Illinois or elsewhere, as may be necessary, convenient, or incidental to any of the purposes or objects of this consolidated corporation; and also thereafter to complete, extend, improve, maintain, use, enjoy, and operate such additional or other property as may be so acquired and constructed; to do all lawful things necessary for the purpose of carrying on its business in the several States and Territories where it operates; to renew and extend outstanding stock and franchises when deemed necessary to prevent their expiration; the power to own, acquire, hold, possess, and enjoy property, real, personal, and mixed, located in Illinois or elsewhere, and to sell, convey, lease, mortgage, pledge, or dispose of the same or any part thereof; the power to consolidate with other companies and to sue, borrow money, and to conduct its business generally as individuals.

That the capital stock of said consolidated corporation was fixed at twenty-five million dollars; nine million five hundred and ten thousand dollars of said amount represented the capital stock of the North Chicago Rolling Mill Company and three million four hundred and eighty-six thousand dollars represented the capital stock of the Union Steel Company; that the stockholders of said constituent companies should be stockholders of the consolidated corporation upon exchange of their stock for consolidated stock in the proportion in which they are severally entitled thereto; that the consolidated stock should be issued as aforesaid only upon surrender of stock issued by said constituent corporations for cancellation; that the consolidated stock might be sold and issued as authorized by the board of directors to acquire property in Illinois or elsewhere, which the board of directors might deem necessary, convenient, or proper to carry out the objects of the consolidated corporation, or for acquiring stocks of other corporations within or without Illinois, or for any purpose which may, in the judgment of the board of directors, be conducive to the interests of said company.

That thereafter said constituent corporations respectively transferred to the said consolidated corporation, being the Illinois Steel Company, all their respective real estate wheresoever situated, together with all buildings, shops, improvements, works, manufactu-

ries, and manufacturing plants and apparatus, sheds, stocks, furnaces, and machinery, with all equipment therefor, together with all their respective interests in operating and other contracts pertaining to their respective businesses, together with all and singular their respective rights, franchises, easements, privileges, immunities, and leases belonging or in any way appertaining to said above-described real estate and manufacturing plants operated in connection with said real estate, and that the shareholders of the shares of stock issued by said constituent corporations respectively surrendered their shares of stock in said constituent corporations, and received in lieu thereof the proportion of the stocks of the said consolidated corporations to which they were respectively entitled, and thereupon the stocks so having been exchanged for the stocks of the Illinois Steel Company were cancelled.

That thereafter the said constituent corporations respectively transferred their respective properties to the Illinois Steel Company in accordance with said articles of consolidation, and thereupon the Illinois S eel Company took possession of all of said property, and from thence hitherto has controlled and operated said property as a corporation under said articles of consolidation, and the said Illinois Steel Company, in the management of the affairs of said company, claims the right and privilege of exercising all the powers set forth and specified in said articles of consolidation and in accordance with the provisions thereof.

That under the laws of the State of Illinois corporations consolidating under the provisions of the statutes of said State can confer upon the consolidated corporations no greater powers and privileges than the powers and privileges conferred upon said constituent corporations by virtue of their respective incorporations.

That thereafter the said consolidated corporation increased its capital stock from twenty-five millions of dollars, as designated and expressed in the articles of consolidation, to the sum of fifty millions of dollars, and filed a certificate of increase of said capital stock, as aforesaid, in the office of the secretary of state of the State of Illinois on the 13th day of February, 1892, together with an affidavit of the president of the said Illinois Steel Company to the effect that the contents of said certificate of increase of capital stock were true; that notwithstanding the fact that the capital stock of said constituent corporations was, at the time of said consolidation, but five million six hundred thousand dollars, said article- of consolidation professed to fix the capital stock of the said consolidated corporation at the sum of twenty-five million dollars, which said corporation thereafter increased from twenty-five to fifty millions of dollars, as aforesaid, and that said The Illinois Steel Company now claims and professes that its capital stock is fifty millions of dollars, and that it has issued capital stock largely in excess of the combined capital stocks of said constituent corporations at the time of said consolidation, and that in representing to the world that it has an authorized capital stock of fifty million dollars and in issuing shares of stock in excess of the combined capital stock of said constituent corporations said The Illinois Steel Company has acted in the premises without

warrant or authority of law and has usurped the power and privilege of issuing the said capital stock in excess of the combined capital stock of said constituent corporations at the time of said consolidation without warrant or authority of law and has usurped said power.

That under and by virtue of said articles of consolidation the Illinois Steel Company claims that it has a right to purchase and own the stocks of other corporations and to control and operate such corporations when the holdings of their capital stocks amount to a majority of the stocks so issued by said corporation, and that it has purchased all of the stocks issued by the Joliet Steel Company, a corporation organized under the laws of the State of Illinois, with its principal office and plant at Joliet, Illinois, and now claims to own said stocks and claims to own all of the tangible property of said Joliet Steel Company and operates and controls the same as shall best subserve its purpose; that in so buying the capital stock and the property of the Joliet Steel Company said The Illinois Steel Company has acted without warrant or authority of law and has usurped and still continues to usurp the right, power, and privilege of owning and controlling the stocks and property of the said Joliet Steel Company without warrant or authority of law.

That said The Illinois Steel Company claims the power to own, acquire, hold, possess, and enjoy property, real, personal, and mixed, located in Illinois or elsewhere, and to sell, convey, lease, mortgage, pledge, or dispose of the same or any part thereof; that by virtue of the power so claimed by the said Illinois Steel Company it has purchased and caused to be conveyed to it real estate located in Illinois and elsewhere, and claims the right to deal in the same in such manner as shall best subserve the interests of said corporation; that the said Illinois Steel Company is not authorized by the powers and privileges which it can lawfully enjoy and exercise to deal in real estate in manner and form as aforesaid, and that in so buying and owning real estate for speculative purposes the said Illinois Steel Company has acted and still acts without warrant or authority of law, and the said Illinois Steel Company has purchased, without warrant or authority of law, as aforesaid, real estate which is not necessary in the exercise and discharge of the powers which it has a right to enjoy under and by virtue of said consolidation, and the power to so buy such real estate as is unnecessary for its legitimate corporate purposes the said Illinois Steel Company has usurped and still continues to usurp.

That while the respective charters of said constituent corporations conferred upon them respectively the right to acquire and hold such amounts of real estate as might be necessary to enable them to carry on the business which they were incorporated to carry on, that in the articles of consolidation respectively executed and adopted by them they sought to confer upon the board of directors of the consolidated company the power to acquire and purchase such quantities of real estate in the State of Illinois or elsewhere as the board of directors of said consolidated corporation might deem necessary; that said constituent corporations could not endow said

consolidated company with greater powers in the premises than they themselves possessed; that the said Illinois Steel Company claims the right to acquire and own all real estate, wheresoever situated, which the board of directors of said company deem necessary, and that said Illinois Steel Company, through its board of directors, has acquired title to and possession of large quantities of real estate under and by virtue of the pretended power so sought to be conferred upon said consolidated corporation as aforesaid by said constituent companies; that in so acquiring such real estate and under and by virtue of said power the said Illinois Steel Company has acted without warrant or authority of law, and the right to acquire real estate beyond such as was necessary to enable said consolidated corporation to carry into effect its legitimate business is a power and right which said Illinois Steel Company has usurped and still continues to usurp.

That the said constituent corporations attempted to confer upon the said Illinois Steel Company the power to issue millions of dollars in shares of said consolidated corporation, to be expended, in the discretion of its board of directors, in manner and form as they should deem necessary, convenient, or proper to carry out the objects of the consolidated corporation or for acquiring stocks of other corporations within or without Illinois or for any purpose which might in the judgment of the board of directors be conducive to the interest of said company; that under and by virtue of said provisions in the articles of consolidation so approved and adopted by said constituent corporations the board of directors of the said Illinois Steel Company claim the right to exercise their discretion and to invest the funds and stocks of said Illinois Steel Company in such manner and for such purposes as may result in pecuniary benefits to the shareholders of the said Illinois Steel Company without regard to the legality of such investments; that in exercising such a discretion and in making such investments without legal authority said The Illinois Steel Company has acted without warrant of law, and in making such investments as aforesaid has and still continues to usurp powers and privileges not acquired by it by reason of the consolidation of the franchises of said constituent corporations.

That said constituent corporations in and by the said articles of consolidation and so adopted by them respectively, as aforesaid, sought to confer power upon the said Illinois Steel Company to issue and sell shares of the capital stock of said consolidated corporation for the purpose of retiring bonds, which bonds were secured by a mortgage entered into between the Union Steel Company and the Metropolitan Trust Company of New York, dated August 14th, A. D. 1886; that under and by virtue of said power the Illinois Steel Company has retired said bonds by sales of its shares of its capital stock in accordance with the said pretended power; that the power to issue said stock for said purpose was without warrant or authority of law and was a usurpation of power upon the part of the said Illinois Steel Company.

Second. And, further answering, the defendants deny each and

every allegation and thing in plaintiff's complaint contained not hereinafter specifically admitted, stated, or denied; and the defendants allege that the plaintiff has never used, occupied, or held the premises set forth in the complaint in the conduct of its business, and such premises are in no way necessary or incident to its business, nor have such premises ever been held, occupied, or used in the conduct of the business of the Swedes Iron Company, the Milwaukee Iron Company, or the North Chicago Rolling Mill Company or either or any of them, nor were the premises described in the complaint necessary to or in any way incident to the business of the plaintiff or either or any of the aforesaid companies; and the defendants upon information and belief allege that neither the plaintiff nor any one of said companies ever had either actual or constructive possession of the premises set forth in the complaint herein.

Third. And, further answering, the defendants allege upon information and belief that one John Stien and his wife on or about the 1st day of January, A. D. 1873, entered upon all the real estate and premises which adjoined and abutted the premises set forth in the complaint herein (and which real estate and premises set forth in the complaint herein were at that time beneath the waters of the river and lake from several inches to several feet and abutted and adjoined said premises so occupied by John Stien and his wife, and any and all accretions of soil thereto from said waters immediately thereupon became the property of said John Stien and wife), and the said John Stien and wife at the aforesaid time took possession of all of the aforesaid described real estate and premises in their own right and as their own property and held the same thereafter adversely to the whole world; that they, the said John Stien and wife, protected such of the aforesaid described real estate and premises as were above the water with a substantial enclosure and fence, and from said time occupied all of such property with their family as their residence and homestead until on or about the 1st day of September, A. D. 1884, when said real estate and premises were sold and the possession and ownership thereof were turned over to Joe Poozocha, who thereafter and on or about the 1st day of January, A. D. 1891, gave and turned over to John Budzisz and August Budzisz, alias Anastazius Budzisz, the defendants herein, the real estate and premises set forth in the plaintiff's complaint herein, and said defendants, John Budzisz and August Budzisz, alias Anastazius Budzisz, have had possession of the same and held the same adversely to the whole world, and all of said real estate and premises have been held adversely against the whole world for more than twenty years by the said John Stien and wife and Joe Poezocha and wife and John Budzisz and August Budzisz, alias Anastazius Budzisz, the defendants herein; that during their respective ownership and ever since 1873 the real estate and premises aforesaid mentioned have been protected by them with substantial inclosures and fences and occupied by them and each of them adversely to the plaintiff and to the whole world, and that each and all of said persons so holding adversely since 1873 have made continual improve-

ments upon the premises described in the complaint and usually cultivated the same; that the premises set forth in the complaint herein have largely been filled in by accretion and by the labors of defendants, and previously to such accretions and labors were beneath the water, and at all times since 1873 defendants and the aforesaid persons have held the same adversely to the plaintiff and to all the world other than themselves.

And the aforesaid facts are pleaded specifically and specially pursuant to sections 4213, 4214, and 4215, R. S. of Wisconsin, 1878, in bar of the plaintiff's cause of action herein.

Fourth. And the defendants upon information and belief allege that neither John W. Pixley, nor Robert Ten Eyck, nor Squire Alexander, nor Edmund B. Dickerman, nor either or any of them, ever had either actual or constructive possession of the premises set forth in the complaint herein, and each and all of said parties were out of the actual possession of the said premises mentioned in the complaint herein for more than five (5) successive years immediately following the making, execution, delivery, and recording of any deeds in which either or any of them were named as grantees, and never began at any time any action or actions to recover the possession thereof, and each and all of said parties, to wit, John W. Pixley, Robert Ten Eyck, Squire Alexander, and Edmund B. Dickerman, were wholly without title and possession, either actual or constructive, at the time of the execution of divers conveyances by them respectively made which relate to the premises described in the plaintiff's complaint herein, and that each and all of the several grantees named in the several conveyances aforesaid wholly failed to acquire and wholly failed to take either actual or constructive possession at any time under said conveyances, and wholly failed ever to begin any actions or actions to recover possession thereof, and wholly failed to acquire any title thereunder, and said facts are pleaded specially and specifically in bar of the plaintiff's cause of action herein pursuant to section 32, chapter 22, Laws of 1859, which is embodied in section 1187, R. S., and pursuant to section 1187, R. S., and the amendments thereto.

Fifth. And, further answering, upon information and belief the defendants allege that the premises set forth in the plaintiff's complaint at the time of the making, delivery, and recording of any and all of the deeds referred to in the fourth (4th) subdivision of this answer and for more than six months immediately preceding such time and for more than six months immediately preceding the expiration of redemption were in the actual occupancy of divers persons claiming adversely to the aforesaid named persons in the fourth (4th) subdivision of this answer, and that no written notice was served on the said persons in actual occupancy, claiming adversely, by the holder of the tax certificate and tax certificates upon which such deed and such deeds issued either three months prior to the issuing of said deed or at any other time, and said facts are pleaded specially and specifically in bar of the plaintiff's cause of action herein pursuant to section 38, chapter 22, Laws of 1859, as

embodied in section 1200, R. S. of Wisconsin, 1878, and pursuant to said section 1200, R. S. of Wisconsin, 1878.

Sixth. And, further answering, upon information and belief the defendants allege that the Swedes Iron Company never had authority to and was wholly without authority to purchase and to speculate in tax certificates and in tax titles and to hold the same, and such conduct was neither incident nor necessary to its business nor within its corporate powers, and that each and all and every of such tax certificates and tax deeds which affect the real estate set forth in the complaint herein so taken and so held by the Swedes Iron Company were and are in excess of its corporate powers and null and void, and such facts are specially pleaded in defense of the plaintiff's cause of action.

Seventh. And, further answering, upon information and belief the defendants allege that the Milwaukee Iron Company never had authority to and was wholly without authority to purchase and to speculate in tax certificates and in tax titles and to hold the same, and that such conduct was neither incident to nor necessary to its business nor within its corporate powers, and that each and all and every of such tax certificates and tax deeds and tax titles which affect the real estate set forth in the complaint herein so taken and so held by the Milwaukee Iron Company were and are in excess of its corporate powers and null and void, and such real estate was not necessary for the conduct of its business and was not acquired by it in receiving and collecting its debts, and such facts are specially pleaded in defense of the plaintiff's cause of action.

Wherefore the defendants demand judgment that this action abate, or in lieu thereof that the plaintiff's complaint be dismissed, and that the defendants be adjudged to be the owners in fee-simple of the premises described in the plaintiff's complaint, together with the costs of this action.

RUBLEE A. COLE,
Attorney for Defendants.

STATE OF WISCONSIN, }
Milwaukee County, } ss:

John Budzisz and August Budzisz, alias Anastazius Budzisz, each for himself being duly sworn, each deposes and says that he is one of the defendants named in the foregoing answer and makes this affidavit on his own behalf, and that he has heard read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to the facts therein stated upon information and belief, and as to those he believes it to be true.

JOHANN BUDZISZ.
ANASTAZIUS BUDZISZ.

Sworn and subscribed to before me this 8th day of April, A. D. 1896.

[SEAL.]

RUBLEE A. COLE,
Notary Public, Milwaukee County, Wisconsin.

* * * * * * *

Amended Answer.

United States Circuit Court, Eastern District of Wisconsin.

ILLINOIS STEEL COMPANY, Plaintiff,
vs.
JOHN BUDZISZ and AUGUST BUDZISZ, (alias) ANASTAZIUS BUDZISZ, Defendants.

And now come John Budzisz and August Budzisz, alias Anastazius Budzisz, by Rublee A. Cole, their attorney, and for their amended answer herein to the complaint of the plaintiff herein allege and show to the court—

That the seven subdivisions of the original answer herein and all the matters and things therein alleged and set forth are hereby alleged and set forth and repeated and by this reference incorporated into this amended answer as fully and to the same effect as though set forth at length herein under and by virtue of the within stipulation of the parties hereto, dated the 15th day of March, A. D. 1897.

Eighth. And further, by way of amended answer herein, the defendants allege that they are informed and verily believe that the title of the United States in and to the property set forth in the plaintiff's complaint has never been extinguished, and that the title to such property, except as hereinafter set forth, is now in the United States; that any pretended claim of title on the part of the plaintiff to the property set forth in the complaint herein, which property is a part of lots one (1) and two (2) of fractional section 33, township seven (7) north, range twenty-two (22) east, was and is derived through a purported entry as a "float" or "floating right" of said lots one (1) and two (2) of fractional section thirty-three (33), township seven (7) north, range twenty-two (22) east, on July 30th, 1835, at the Green Bay land office, by one Daniel Darnell.

That the defendants are informed and verily believe that the entry of Increase Claflin and Daniel Darnell, at the United States land office at Green Bay, Michigan Territory, on the 30th day of July, 1835, of lot one (1) of fractional section eight (8), township twenty-two (22) north, range twenty (20) east, containing 41.80 acres, as under "pre-emption act, 1834," with their residence therein stated as Brown county, Michigan Territory, was and is wholly void and insufficient and lacked the essential ingredients both in law and fact, both in the matter of residence and occupation under and by virtue of the several laws of the United States, to authorize Increase Claflin and Daniel Darnell, or either or any of them, to have, hold, or locate any of the public lands of the United States as a "float" or as a "floating right," and that such entry was and is null and void so far as conferring any right either upon Increase Claflin or said Daniel Darnell to enter, locate, hold, or have any of the public lands of the United States as a "float" or as a "floating right."

That the defendants allege upon information and belief that neither said Increase Claflin nor said Daniel Darnell resided upon and cultivated prior to the year 1829 the aforesaid described lands contained in the aforesaid joint entry, nor were they in joint possession of said described lands on the 19th day of June, 1834, nor had they or either of them cultivated any part of said lands in the year 1833.

That the defendants are informed and verily believe that the Indian title of lots one (1) and two (2) of fractional section thirty-three (33), township seven (7) north, range twenty-two (22) east (which description contains the land and premises set forth in the complaint herein), was not extinguished on the 29th day of May, 1830, and upon that day was in the Indians, and that the title to the aforesaid lots one (1) and two (2), with other lands, was conveyed to the United States by a treaty with the Menomonee tribe of Indians on February 8th, 1831.

That your defendants are informed and verily believe and allege that the aforesaid Daniel Darnell did not cultivate any portion of said lots one (1) and two (2) of fractional section thirty-three (33), township seven (7) north, range twenty-two (22) east, at any time or during any portion of the year 1833, and was not in possession of said lots one (1) and two (2) or any portion thereof on the 19th day of June, 1834, and said Daniel Darnell did not reside on and cultivate said lots one (1) and two (2) or any portion thereof prior to the year 1829.

That your defendants are informed and verily believe that the entry on the 30th day of July, 1835, at the United States land office at Green Bay, Michigan Territory, by the aforesaid Daniel Darnell, as a "float" or "floating right" of and on lots one (1) and two (2) of said fractional section thirty-three (33), township seven (7) north, range twenty-two (22) east, was and is null and void and in no way extinguished the title of the Government of the United States, and any purported patents thereon by the United States to any person or persons were and are null and void, and that the title to the aforesaid lots one (1) and two (2) and to the premises set forth in the complaint herein (which premises in dispute exceeds the sum or value of two thousand dollars, exclusive of interest and costs) is under the Constitution and laws of the United States and the treaties made under their authority in the United States, and that such title of the United States is not yet extinguished.

Wherefore the defendants ask and demand that the complaint of the plaintiffs herein be dismissed with costs.

RUBLEE A. COLE,
Attorney for Defendants.

STATE OF WISCONSIN, } ss:
Milwaukee County, }

August Budzisz, alias Anastazius, being duly sworn, deposes and says that he is one of the defendants named in the foregoing amended answer, which amended answer he has heard read and knows the contents thereof, and that the same is true of his own

knowledge except as to those things stated therein upon information and belief, and as to those he verily believes it to be true, and that the new paragraph eighth in this amended answer as a further defense herein, together with and in addition to the original answer herein, shall constitute and be the amended answer herein under and by virtue of the stipulation herein dated March 15th, 1897, as fully as though all said allegations in the original answer were again set forth herein at length, and that this affidavit is made both upon his own behalf and in behalf of the other defendant herein.

ANASTAZIUS BUDZISZ.

Subscribed and sworn to before me this 2nd day of April, A. D. 1897.

RUBLEE A. COLE,
[SEAL.] *Notary Public, Milwaukee County, Wisconsin.*

* * * * * * *

April 26, 1897.—This day came the parties, by their counsel, and, on consideration of the motion of the plaintiff for an order striking out certain portions of the answer of the defendants herein, it is ordered by the court that said motion be granted with leave to the defendants to amend in respect of the allegations in the third, fourth, and fifth defenses of the answer if they shall be so advised.

* * * * * * *

United States Circuit Court, Eastern District of Wisconsin.

ILLINOIS STEEL COMPANY, Plaintiff,
vs.
JOHN BUDZISZ and AUGUST BUDZISZ, (alias) ANASTAZIUS BUDZISZ, Defendants.

And now come John Budzisz and August Budzisz, alias Anastazius Budzisz, by Rublee A. Cole, their attorney, and for their second amended answer herein to the complaint of the plaintiff herein allege and show to the court:

The defendants above named admit that each of them are residents and citizens of the State of Wisconsin and reside at Milwaukee, in the eastern district of said State of Wisconsin.

And further answering, in addition to the matter not stricken out of the original answer, the defendants allege and show to the court that the said defendants have no knowledge or information sufficient to form a belief as to the correctness of the description of the premises set forth in the plaintiff's complaint, and which it is alleged that the defendants unlawfully withhold the possession of said premises from the plaintiff; but the said defendants admit that since on or about the first day of January, A. D. 1891, the said defendants, John Budzisz and August Budzisz, alias Anastazius Budzisz, have had possession of certain portions of lots one (1) and two (2) of fractional section thirty-three (33), township seven (7) north, range twenty-two (22) east, and have occupied the same; but upon information and belief deny that they have wrongfully detained

the same from the possession of the plaintiff, and upon information and belief deny that they have unlawfully withheld the possession of the said premises from the said plaintiff, and upon information and belief deny that the said plaintiff has been damaged in any sum whatsoever.

And, further answering, the defendants deny each and every allegation in the plaintiff's complaint contained not hereinbefore or hereinafter specifically admitted, stated, or denied.

And further, by way of a second amended answer herein and as matter of defense herein and by way of a counter-claim herein, the defendants allege that they are informed and verily believe that the title of the United States in and to the property set forth in the plaintiff's complaint has never been extinguished, and that the title to such property, except as hereinafter set forth, is now in the United States; that any pretended claim of title on the part of the plaintiff to the property set forth in the complaint herein, which property is a part of lots one (1) and two (2) of fractional section thirty-three (33), township seven (7) north, range twenty-two (22) east, was and is derived from a purported entry as a "float" or "floating right" of said lots one (1) and two (2) of fractional section thirty-three (33), township seven (7) north, range twenty-two (22) east, on July 30th, 1835, at the Green Bay land office by one Daniel Darnell.

That the defendants are informed and verily believe that the entry of Increase Claflin and Daniel Darnell, at the United States land office at Green Bay, Michigan Territory, on the 30th day of July, 1835, of lot one (1) of fractional section eight (8), township 22 north, range (20) twenty east, containing 41.80 acres, as under "preemption act 1834," with their residence therein stated as Brown county, Michigan Territory, was and is wholly void and insufficient and lacked the essential ingredients both in law and fact, both in the matter of residence and occupation under and by virtue of the several laws of the United States, to authorize Increase Claflin and Daniel Darnell or either or any of them to have, hold, or locate any of the public lands of the United States as a "float" or as a "floating right," and that such entry was and is null and void so far as conferring any right, either upon Increase Claflin or said Daniel Darnell, to enter, locate, hold, or have any of the public lands of the United States as a "float" or as a "floating right," and that such entry was and is null and void so far as conferring any right, either upon Increase Claflin or said Daniel Darnell, to enter, locate, hold, or have any of the public lands of the United States as a "float" or as a "floating right."

That the defendants are informed and verily believe that the said lot one (1) of fractional section eight (8), township twenty-two (22) north, range twenty (20) east, which contain- 41.80 acres and which was and is situated east of the Fox river and in a southernly direction from the Blackbird island, was not a quarter section nor a half quarter section nor a residuary quarter quarter of a section, nor was it a residuary quarter quarter of a section, made such by locations made under the act of Congress of the 5th of April, 1832, and was not such a tract of land as to authorize a float or floating right upon

a joint entry thereon by two persons under the act of Congress of the 29th of May, 1830, and under the act of Congress of the 19th of June, 1834, and that the said joint entry, as the defendants are informed and believe, was and is null and void, so far as vesting in either said Increase Claflin and Daniel Darnell or either of them the right to locate a float or floating right elsewhere upon the public lands of the United States in the said land district under the aforesaid laws.

That the defendants are informed and verily believe that the said Increase Claflin lived on the said lot one (1) of fractional section eight (8), township twenty-two (22) north, range twenty (20) east, with his family in a good dwelling-house on the 19th of June, 1834, and had lived there ever since from the year 1832 till about the 10th day of May, 1835, and no longer, and had cultivated a portion of said land in the years 1833 and 1834 and resided upon said land on the 19th day of June, 1834, but had not resided upon and cultivated said land during the year 1829 nor the year 1830, nor was he residing upon said land or in possession thereof on the 29th of May, 1830, nor had he resided upon and cultivated the said land prior to the year 1829, as the defendants are informed and verily believe.

And the defendants allege upon information and belief that the said Increase Claflin was not the sole and only occupant of said lot one (1) of fractional section eight (8), in township number twenty-two (22) north, range twenty (20) east, in 1833 and 1834, but that Daniel Darnell also occupied and cultivated a part of said lot one (1) of fractional section eight (8), in township number twenty-two (22) north, range twenty (20) east, in 1833 and 1834, and resided upon the same during said years in the house of Increase Claflin and was a single man and boarded in the family of Increase Claflin, and Daniel Darnell so resided on the 19th of June, 1834; and the defendants further allege upon information and belief that the said Daniel Darnell did not reside upon and did not cultivate said land in the years 1829 and 1830 or either of said years, nor did said Daniel Darnell reside upon and cultivate said lands prior to the year 1829, nor was said Daniel Darnell in possession of said land or any part thereof on the 29th of May, 1830.

That the defendants are informed and verily believe that the Indian title to lot one (1) of fractional section eight (8), township twenty two north, range twenty (20) east, which contained 41.80 acres, and a joint entry of which was made by the said Increase Claflin and Daniel Darnell on the 30th day of July, 1835, at the Green Bay, Michigan Territory, local United States land office, was not extinguished on the 29th of May, 1830, and upon that day was in the Indians, and that the Indian title to the aforesaid lot one (1) of fractional section eight (8), township twenty-two (22) north, range twenty (20) east, with other lands, was conveyed, as the defendants are informed and verily believe, to the United States under and by virtue of several treaties with the Menomonee tribe of Indians as follows, to wit:

The purported treaty of the date of the 8th of February, 1831, and the supplemental article thereto, dated February 17th, 1831, which

were conditionally ratified by the Senate of the United States on the 25th day of June, 1832, and the provisional ratification thereof signed by the President of the United States on the 9th day of July, 1832, and the purported treaty with the Menomonee Indians, dated the 27th day of October, 1832, which was ratified by the Senate of the United States by the resolutions of said Senate on the second day of March, 1833, and such ratification, with the advice and consent of the Senate, signed by the President of the United States on the 13th day of March, 1833.

That your deponents are informed and verily believe that thereafter a treaty was made and dated on the 18th day of October, 1848, between the United States and the Menomonee tribe of Indians whereby, among other things, "the said Menomonee tribe of Indians agree to cede, and do hereby cede, sell and relinquish to the United States all their lands in the State of Wisconsin, wherever situated," and which treaty was duly ratified on the 23rd of January, 1849.

That the defendants are informed and verily believe that under and by virtue of the sixth subdivision of the aforesaid treaty of the 8th day of February, 1831, "the Menomonee tribe of Indians shall be at liberty to hunt and fish on the lands they have now ceded to the United States, on the east side of Fox river and Green Bay, with the same privileges they at present enjoy, until it be surveyed and offered for sale by the President, they conducting themselves peaceably and orderly."

That the defendants are informed and verily believe and allege that township number twenty-two (22) north of range twenty (20) east was surveyed in 1834, and a plat of survey of said township was certified to be strictly conformable to the field-notes of the survey thereof on file in the office of the surveyor general at Cincinnati July 21st, 1835, which field-notes had been examined and approved, and such certificate was signed by Rob't T. Lytle, the surveyor general, on the said July 21st, 1835.

And the defendants are informed and verily believe and further allege that the lands included in township number twenty-two (22) of range twenty (20) were first offered for sale, with other lands, by the President by his proclamation dated the sixth day of May, A. D. 1835.

That the defendants are informed and verily believe that by reason of the aforesaid treaties and in conformity with the reasoning of the opinion of the solicitor of the Treasury of the date of the 21st of February, 1837, the said township twenty-two (22) of range number twenty (20) was not subject to entry nor was any part thereof subject to entry under act of Congress of the 29th of May, 1830, nor under the act of the 19th of June, 1834, nor was any part of said township subject to entry under said laws, and the aforesaid joint entry of Increase Claflin and Daniel Darnell was and is contrary to law and to the treaties of the United States, and the said joint entry was and is null and void.

That the defendants are informed and verily believe that for the same reason the patent of the United States dated the first day of September, 1838, to Alexander J. Irwin, assignee of Increase Claflin

and Daniel Darnell, for the said lot number one (1) of fractional section eight (8), in township twenty-two (22) north, of range twenty (20) east, in the district of land subject to sale at Green Bay, was and is null and void.

That the defendants are informed and verily believe and allege that the Indian title of lots one (1) and two (2) of fractional section thirty-three (33), township seven (7) north, range twenty-two (22) east (which description contains the land and premises set forth in the complaint herein), was not extinguished on the 29th day of May, 1830, and upon that day was in the Indians, and that the Indian title to the aforesaid lots one (1) and two (2) of said fractional section thirty-three (33), township seven (7) north, range twenty-two (22) east, was conveyed to the United States by the same treaties as was township number twenty-two (22), range twenty (20) east, which treaties have been heretofore set forth herein, and that said lands in said fractional section thirty-three (33) were first offered for sale, with other lands, by the President by his proclamation dated the sixth day of May, A. D. 1835, and that township seven (7), range twenty-two (22) east, was surveyed in first quarter of 1835 and a plat of survey thereof duly certified July 21, 1835, by Rob't T. Lytle, the surveyor general, and that by reason thereof the said lots one (1) and two (2) were not subject to be located upon and entered with a "float" or "floating right" under the act of Congress of the 29th of May, 1830, or under the act of Congress of the 19th of June, 1834, and that the said purported entry of Daniel Darnell of the said lots one (1) and two (2) of fractional section thirty-three (33), township seven (7) north, range twenty-two (22) east, on the 30th day of July, 1835, at the United States land office at Green Bay, Michigan Territory, was and is null and void.

That the defendants are informed and verily believe and allege that the aforesaid Daniel Darnell did not cultivate any portion of said lots one (1) and two (2) of fractional section thirty-three (33), township seven (7) north, range twenty-two (22) east, at any time or during any portion of the year 1833, nor any portion of the year 1834, nor did he reside upon the same during any portion of said years, and was not in possession of said lots one (1) and two (2) or any portion thereof on the 19th day of June, 1834, and said Daniel Darnell did not reside on and cultivate said lots one (1) and two (2) or any portion thereof during the year 1829, nor during the year 1830, and was not in possession of the said lots one (1) and two (2) on the 29th of May, 1830, and did not cultivate and reside on said lots one (1) and two (2) or any portion thereof prior to the year 1829; that the defendants are informed and verily believe that the patent of the United States dated the 16th day of April, 1838, to Albert G. Ellis, assignee of Daniel Darnell, based upon pre-emption float certificate No. 2, Green Bay series, under and by virtue of the laws of the United States and the aforesaid treaties herein set forth, was and is null and void and in no way extinguished the title of the Government of the United States to the aforesaid lots numbered one (1) and two (2) of fractional section thirty-three (33), township seven (7) north, range

twenty-two (22) east, and that the title to the aforesaid lots one (1) and two (2) and to the premises set forth in the complaint herein (which premises in dispute exceeds the sum or value of two thousand dollars ($2,000), exclusive of interests and costs) is under the Constitution and the laws of the United States and the treaties made under their authority in the United States, and that such title of the United States is not yet extinguished; wherefore the defendants ask and demand that the aforesaid joint entry of Increase Claflin and Daniel Darnell, at the United States land office at Green Bay, Michigan Territory, on the 30th day of July, 1835, to lot one (1) of fractional section eight (8), township twenty-two (22) north, range twenty (20) east, containing 41.80 acres, be declared null and void and cancelled; that the aforesaid patent of the United States of the date of the first of September, 1838, to Alexander J. Irwin, assignee of Increase Claflin and Daniel Darnell, to said lot number one (1) of fractional section eight (8), township twenty-two (22) north, of range twenty (20) east, be declared null and void and cancelled; that the pre-emption float entry number two (2), made on the 30th day of July, 1835, at the United States land office at Green Bay, Michigan Territory, by the aforesaid Daniel Darnell, to lots one (1) and two (2) of said fractional section thirty-three (33), township seven (7) north, range twenty-two (22) east, be declared null and void and cancelled; that the patent of the United States, dated the 16th day of April, 1838, to Albert G. Ellis, assignee of Daniel Darnell, based upon pre-emption float certificate No. 2, for fractional section thirty-three (33), in township seven (7) north, of range twenty-two (22) east, in the district of lands subject to sale at Green Bay, be declared null and void and cancelled.

And, further, the defendants ask and demand that the complaint of the plaintiff herein be dismissed with costs.

RUBLEE A. COLE,
Attorney for Defendants.

STATE OF WISCONSIN, } ss:
Milwaukee County, }

John Budzisz, being duly sworn, deposes and says that he is one of the defendants named in the foregoing second amended answer, which second amended answer he has heard read and knows the contents thereof, and that the same is true of his own knowledge except as to those things stated therein upon information and belief, and as to those he believes it to be true, and that this affidavit is made both upon his own behalf and in behalf of the other defendant herein.

JOHN BUDZISZ.

Subscribed and sworn to before me this 21st day of June, A. D. 1897.

RUBLEE A. COLE,
[SEAL.] *Notary Public, Milwaukee County, Wisconsin.*

* * * * * * *

July 30, 1897.—This day came the parties, by their counsel, and on consideration of the motion of the plaintiff to strike from the files portions of the second amended answer and also the first amended answer of the defendants, it is ordered by the court that said motion be, and hereby is, granted, and that the said first amended answer and that portion of the second amended answer beginning with the words "And further, by way of a second amended answer herein and as matter of defense herein and by way of counter-claim herein," in folio 4, down to and including the words " be declared null and void and cancelled," in folio 28 thereof, be, and are hereby, stricken out.

August 3, 1897.—This day came the defendants, by their attorney, and filed exceptions to the orders of April 26, 1897, and to the order of July 30, 1897; which exceptions are as follows:

United States Circuit Court, Eastern District of Wisconsin.

ILLINOIS STEEL COMPANY, Plaintiff,
vs.
JOHN BUDZISZ (alias) and AUGUST BUDZISZ (alias), Defendants.

And now come the defendants herein, by Rublee A. Cole, their attorney, and except to the order of the court herein dated *the* July 30th, 1897, and to each and every part thereof, based upon the motion made July 1, 1897, before this court, and further specifically except to the respective portions of said order as follows, to wit:

1.

The defendants specifically except to that portion of the aforesaid order as strikes out of the second amended answer the facts therein pleaded, in so far as such facts are pleaded as matter of defense, beginning with the words, in folio number 4 of said second amended answer, "And further, by way of a second amended answer herein and as matter of defense herein and by way of counter-claim herein," and including all of the said second amended answer following said words, down to and including the words " be declared null and void and cancelled," in folio 28 thereof.

2.

The defendants specifically except to that portion of the aforesaid order as strikes out of the second amended answer the facts therein pleaded, in so far as such facts are pleaded by way of counter-claim, beginning with the words, in folio number 4 of said second amended answer, "And further, by way of a second amended answer herein and as matter of defense herein and by way of counter-claim herein," and including all of the said second amended answer following said words, down to and including the words " be declared null and void and cancelled," in folio 28 thereof.

3.

The defendants specifically except to that portion of the aforesaid order as strikes out of the second amended answer all that

portion thereof beginning with the words, in folio number 4 of said second amended answer, "And further, by way of a second amended answer herein and as matter of defense herein and by way of counterclaim herein," and including all of the said second amended answer following said words, down to and including the words "be declared null and void and cancelled," in folio 28 thereof.

4.

The defendants specifically except to that portion of the aforesaid order striking out the whole of said first amended or amended answer.

Yours, &c., RUBLEE A. COLE,
Attorney for Defendants.

The foregoing exceptions and each of the same were duly taken and reserved this 3rd day of August, 1897.

By the court:

WM. H. SEAMAN, *Judge.*

* * * * * * *

And afterwards, to wit, on the twenty-eighth day of said term, to wit, on the 20th day of November, A. D. 1897, the following proceedings were had, to wit:

Judgment.

ILLINOIS STEEL COMPANY
vs.
JOHN BUDZISZ & AUGUST BUDZISZ, alias ANASTAZIUS BUDZISZ. } At Law.

This day came the plaintiff, by its counsel, and moved the court for judgment upon the verdict of the jury heretofore entered in this cause.

Whereupon it is considered and adjudged by this court now here that the said plaintiff, Illinois Steel Company, is the owner in fee-simple absolute of that portion of lots one and two of fractional section 33, township 7 north, range 22 east, in the city and county of Milwaukee and State of Wisconsin, and in the fifth ward of said city of Milwaukee, and bounded and described as follows, to wit: Commencing at a point which is 2 feet south 21 degrees east, 426 feet south 69 degrees west from the southeasterly corner of block 194, in the fifth ward, in said city and county of Milwaukee, Wisconsin; thence south 24 degrees 30 minutes east 44.70 feet to a point; thence south 60 degrees 45 minutes west 135 feet to a point; thence south 24 degrees east 12 feet to a point; thence south 66 degrees west 85.80 feet to a point; thence north 25 degrees 45 minutes west 70.80 feet to a point; thence north 66 degrees east 221 feet to the point of commencement, except the one undivided six hundred and eighty-third part of that portion of the said premises lying north of the center of Cooper street, and that the said plaintiff do have and recover of the said defendants, John Budzisz

and August Budzisz, alias Anastazius Budzisz, possession of the whole of said premises, together with six cents damages, so assessed by the jury, and one hundred and ninety-two dollars and forty-seven cents ($192.47), its costs and disbursements about its said suit in this behalf by it expended, and that it have a writ of possession and execution therefor.

Judgment-roll signed November 20th, A. D. 1897.

(Signed) EDWARD KURTZ, *Clerk.*

Damages	$0 06
Costs	192 47
	$192 53

* * * * * * *

Circuit Court of the United States, Eastern District of Wisconsin.

ILLINOIS STEEL COMPANY, Plaintiff,
vs.
JOHN BUDZISZ and AUGUST BUDZISZ, alias ANASTAZIUS BUDZISZ, Defendants. } At Law.

Assignment of Errors.

The defendants, John Budzisz and August Budzisz, alias Anastazius Budzisz, in this action, by Rublee A. Cole, their attorney, in connection with their petition for a writ of error, make the following assignment of errors, which they aver occurred upon the trial of the cause, and which, under the judgment in this case, they aver occurred, to wit:

1. There was a denial of rights claimed under treaties of the United States.

2. That the purported patent of the United States under which plaintiff claims title was and is void, and was issued by officers of the Government without any provision of law authorizing the same.

3. That the ruling of the circuit court of the United States upon the decree in the partition proceedings was a divesting of a vested right in the defendants.

4. That the plaintiff in ejectment in this case in the United States circuit court recovered the possession of a street dedicated to the public by the consent of the parties to the partition decree, dated July 9, 1846.

5. That under the foreign will in this case no title to the premises in controversy is in the executor, though so adjudged in the circuit court of the United States.

6. That the certified copy of the will of Eber B. Ward, of Detroit Michigan, and the probate thereof, which was admitted in evidence was not competent evidence, either of the will or of its probate.

7. That the said copy of the will of Eber B. Ward was not properly authenticated.

8. That the copy of the probate of the said will of Eber B. Ward was not properly authenticated.

9. The judgment was in effect the taking of private property for other than a public use without due process of law.

10. The court erred in allowing the plaintiff's bill of costs.

11. The court erred in the rejection of the evidence offered by the defendants in rejecting the certified township plat of township No. 22 north of range 20 east, marked "Defendants' Exhibit No. 3."

12. The court erred in the rejection of the evidence offered by the defendants in rejecting the certified copy of the affidavit and declaratory statement of F. W. Tamms before the Wausau, Wisconsin, United States land office, that he, on or about the fifth or sixth day of January, 1888, and the other persons living on said lots one (1) and two (2) of fractional section thirty-three (33), township seven (7) north, of range twenty-two (22) east, at other times have settled and improved the said lots, and declaring his intention in behalf of himself and in behalf of all persons now living thereon to claim the said tract of land, etc.; which affidavit and declaratory statement is marked "Defendants' Exhibit No. 4."

13. The court erred in the rejection of the evidence offered by the defendants in rejecting the certified copy of the affidavit of F. W. Tamms before the Wausau, Wisconsin, United States land office, claiming the right of pre-emption and entry under the various laws of the United States applicable thereto in behalf of himself and in behalf of all persons now living and residing on said lots one (1) and two (2) of fractional section thirty-three (33), township seven (7) north, of range twenty-two (22) east, and declaring their intention to claim the said tract of land as of right under the several statutes of the United States applicable thereto, etc., and which certified copy of affidavit is marked "Defendants' Exhibit No. 5."

14. The court erred in the rejection of the evidence offered by the defendants in rejecting the certified copy of the naturalization certificate of F. W. Tamms, which was filed with his applications before the United States land office at Wausau, Wisconsin, and which certified copy of the said certificate of naturalization is marked "Defendants' Exhibit No. 6."

15. The court erred in the rejection of the evidence offered by the defendants in rejecting the certified copy of the power of attorney and authority of Rublee A. Cole to appear in behalf of the said applicants before the United States land office at Wausau, Wisconsin, and before the General Land Office and the Department of the Interior in behalf of said applicants, and which certified copy is marked "Defendants' Exhibit No. 7."

16. The court erred in the rejection of the evidence offered by the defendants in rejecting the certified copy of the decision of the Wausau, Wisconsin, United States land office rejecting the application of the said F. W. Tamms, and which certified copy is marked "Defendants' Exhibit No. 8."

17. The court erred in the rejection of the evidence offered by the defendants in rejecting the certified copy of the notice of appeal of the said F. W. Tamms from the decision of the Wausau, Wisconsin, local United States land office to the honorable Commissioner of the

General Land Office and the assignment of errors in said matter, and which certified copy is marked "Defendants' Exhibit No. 9."

18. The court erred in the rejection of the evidence offered by the defendants in rejecting the certificate that each of the aforesaid exhibits from the United States local land office at Wausau, Wisconsin, are true and correct copies of the originals; which certificate is marked "Defendants' Exhibit No. 10."

19. The court erred in the rejection of the evidence offered by the defendants in rejecting the certificate of the Commissioner of the General Land Office as to the appointment and qualification and as to the existing register of the United States land office at Wausau, Wisconsin; which certificate is marked "Defendants' Exhibit No. 11."

20. The court erred in the rejection of the evidence offered by the defendants in rejecting the opinion and decision of the Commissioner of the General Land Office affirming the decision of the Wausau, Wisconsin, land office in rejecting the application of F. W. Tamms in behalf of himself and others for the land therein described; which decision is marked "Defendants' Exhibit No. 12."

21. The court erred in the rejection of the evidence offered by the defendants in rejecting the notice of appeal of F. W. Tamms in behalf of himself and of others from the decision of the honorable Commissioner of the General Land Office to the honorable Secretary of the Interior; which notice of appeal is marked "Defendants' Exhibit No. 13."

22. The court erred in the rejection of the evidence offered by the defendants in rejecting a letter from the honorable Secretary of the Interior to Rublee A. Cole, Esq., Milwaukee, Wisconsin, in the matter of the said appeal of F. W. Tamms, and which letter is marked "Defendants' Exhibit No. 14."

23. The court erred in the rejection of the evidence offered by the defendants in rejecting a letter from the General Land Office dated May 17th, 1897, in substance that the appeal of F. W. Tamms from the decision of the Commissioner of the General Land Office to the Secretary of the Interior, together with the papers in the case, have been transmitted to the Secretary of the Interior, showing that the said application is now pending before the Secretary of the Interior; which letter is marked "Defendants' Exhibit No. 15."

24. The court erred in the rejection of the evidence offered by the defendants in rejecting and excluding all of the said testimony so offered by the defendants in the certified records and documents marked "Defendants' Exhibits No. 4 to 15, inclusive."

25. The court erred in the rejection of the evidence offered by the defendants in rejecting and excluding the certified copy of the inventory of the real estate in Wisconsin of the estate of Eber B. Ward; which certified copy is marked "Defendants' Exhibit No. 18."

26. The court erred in the rejection of the evidence offered by the defendants in rejecting a certified copy of Schedule G of the inventory of the estate of Eber B. Ward and marked "Defendants' Exhibit No. 19."

27. The court erred in the rejection of the evidence offered by the defendants in rejecting a certificate of the proper officer, duly authenticated, in charge of the records in Michigan, in the matter of the estate of Eber B. Ward, that he has made examinations of the record of the probate court of the county of Wayne, State of Michigan, and that the following pieces of land or any part or portion thereof, viz:

Blocks 175 to 195, inclusive, in the third ward, in the city of Milwaukee, Milwaukee county, Wisconsin, and fractional section thirty-three (33), in township seven (7) north, of range twenty-two (22) east, in the State of Wisconsin, do not appear in the inventory of the estate of Eber B. Ward, deceased, and that said land has not been disposed of by any order of said court, and which certificate, duly authenticated, is marked "Defendants' Exhibit No. 20."

28. The court erred in using the following language in the charge to the jury: "In accordance with the suggestions of the court, gentlemen, at the time when we closed on Friday, it is the conclusion of the court that the record testimony produced by the plaintiff shows clearly a record title in the plaintiff to the property in question."

29. The court erred in using the following language in the charge to the jury: "That is, it appearing that the plaintiff was vested with the fee of the blocks of land on each side of the street in question, it became vested with the title to the center of the street on each side, and therefore becomes vested with the fee of the whole property."

30. The court erred in using the following language in the charge to the jury: "The plaintiff, as I understand the proof, has shown the title from the Government to all except a very small fraction, and as to that fraction it has been covered by tax deed."

31. The court erred in using the following language in the charge to the jury: "So that upon the record here, undisputedly, the plaintiff is vested with the title to this property."

32. The court erred in using the following language in the charge to the jury: "The defendant has offered nothing."

33. The court erred in using the following language in the charge to the jury: "He entered a little less than six years ago upon this property, put up his shanty as a squatter—as an intruder, as the law names it—without any right or claim."

34. The court erred, after it had stated as follows: "It is true, gentlemen, that a man, no matter what entry he makes, may stand in an action of this kind upon this position: that if the plaintiff fails to show in an action of ejectment a title he may take the benefit of that—take the advantage of it," in thereafter stating in the next sentence and in using the following language in the charge to the jury: "That cannot apply to this case, because, as I have already stated, the plaintiff has shown the record title."

35. The court erred, after it had stated to the jury, "Counsel for the defendant has attempted to introduce here evidence to show that the Government title under which this plaintiff claims was void; that by reason of certain treaties and certain other matters asserted

by him no title is shown in the plaintiffs," in thereafter, in the next sentence, stating to the jury and in using the following language in the charge to the jury: "You are instructed, gentlemen, upon that point that this defendant is in no position to urge any such defense, if there were such a defense existing at the time."

36. The court erred in using the following language in the charge to the jury: "A title obtained from the Government is the highest muniment of title, and it is not permitted that it be assailed by any one except the Government or some one claiming under the rights of the Government."

37. The court erred in using the following language in the charge to the jury: "Aside from that, a patent from the Government is invulnerable."

38. The court erred in using the following language in the charge to the jury: "Of course, the responsibility of this verdict is with the court on that matter, but it is for you to put it in form by a verdict."

39. The court erred in directing the verdict for the plaintiff against the defendants.

Wherefore the defendants pray that a writ of error from the Supreme Court of the United States may issue to the United States circuit court for the eastern district of Wisconsin, and further pray that the Supreme Court of the United States will reverse the said judgment of the circuit court of the United States for the eastern district of Wisconsin, and that the said defendants may be restored to all things which they have lost by occasion of the said judgment.

Dated this 3rd day of December, A. D. 1897.

RUBLEE A. COLE,
Attorney for Defendants.

Endorsed: Filed December 4, 1897. Edward Kurtz, clerk.